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CASE & COMMENT

MONTHLY

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Query: Which law governs?

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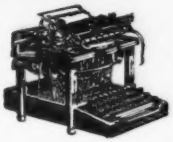

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RECENT IMPORTANT, INTERESTING DECISIONS

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LEGAL NEWS NOTES AND FACETIÆ

VOL. 12. FEBRUARY, 1906. No. 9.

CASE AND COMMENT

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For What Good?

Counsel that darkeneth knowledge has been poured out in large measure by some who have taken a hand in the discussion of the life insurance investigation in New York. But none of it quite equals the unwisdom and misconception exhibited by a prominent newspaper in discussing the question, What good is to be got out of all this long and extraordinary investigation? It inquires, as many other journals have done, if all this will result in the lowering of the premiums of life insurance; and, if not, it wants to know what is the good of it all. No hint appears of any understanding on the part of the writer of the fact that every life insurance company must charge premiums greater than the probable cost in order to be safe. Any company that does not have the right to make assessments on its policy holders over and above the stipulated premiums must necessarily charge premiums large enough to make a safe surplus to provide for exceptional death losses. Our laws, indeed, recognize this necessity. Every mutual company—and most of the life insurance companies are mutual—gives back to the policy holders in dividends such part of the premiums as may be left after providing for the necessities of the business and maintaining its undoubted safety. It is not probable that the present life insurance rates will be reduced. It is certainly not clear that they ought to be. Putting the question on the narrowest basis of the financial interests of the policy holders, the question what advantage they will get from all this extraordinary investigation if the premiums are not reduced, seems to imply ignorance of the fact that all the money that has been stolen, embezzled, or in any way wasted, by the insurance officials, would have gone to increase their dividends if it had been honestly used. It is a demonstrable fact that some companies which have been honestly administered have given much better returns to their policy holders in dividends than have been given by the companies which have been so shamelessly looted by their officials. Nevertheless, the amount of loss to the individual policy holder in the most shamefully plundered of these companies has been comparatively small. A company whose funds held for policy holders are almost incredible in amount has at the same time so vast an army of policy holders that their individual shares of the loss of a few millions of dollars will be very small.

What, then, is the advantage of all this investigation? We may as well ask, What is the advantage of the investigation of the post-office frauds and the prosecution and punishment of the chief grafters; or what is the good of prosecuting those who have been guilty of mammoth frauds on the gov-

ernment in respect to public lands; or what is the advantage, in fact, of prosecuting any criminals at all, if the average citizen does not get any money in his pocket as the result? The difference between a nation which has honest officials, which enforces the laws impartially, which punishes, and, as far as possible, prevents, crime either of violence or of corruption, and a government which is rotten with corruption, and under which both violence and corruption are unrestrained, from the highest to the lowest stratum of society, can be preserved only when ordinary citizens, and even partisan newspapers, are able to see an advantage in maintaining the law and punishing dishonesty, even if their own pockets are not enriched by the operation.

Power of Congress to Regulate Rates.

A denial of the constitutional power of Congress to establish rates for interstate transportation is made, with an elaborate argument, by Edward L. Andrews in an article contributed to the "New York Sun," and republished in pamphlet form. Without undertaking to give a complete analysis of the pamphlet, the following quotation gives what may be regarded as the gist of his contention respecting "the guiding principle inspiring the commerce clause and its operation." He says: "Its scope is mainly, if not wholly, of a negative character. It was intended to authorize the removal of restrictions upon commerce. . . . In its own field of legislation, Federal authority has heretofore been exerted and sustained upon the theory that it removed obstacles to interstate commerce, and was, therefore, justifiable upon the principle of regulation. Such is the adjudicated doctrine of the Sherman law, and such is the theory upon which certain commerce commission powers have been affirmed. In short, the judicial and legislative action of the general government has heretofore been predicated upon this legitimate regulative and corrective authority." The author therefore contends that the power to regulate commerce does not extend to the power to regulate rates of transportation.

The judicial construction of the constitutional grant of the power to regulate commerce among the states seems to settle this question against the above contention and in favor of the power of Congress to regulate the rates for interstate transportation. The opinion of the court in Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96, speaks on this point as follows: "While unfriendly or discriminating legislation of the several states may have been the chief cause for granting to Congress the sole power to regulate interstate commerce, yet we fail to find in the language of the grant any such limitation of that power as would exclude Congress from legislating on the subject, and prohibiting those private contracts which would directly and substantially, and not as a mere incident, regulate interstate commerce." And again: "Commerce is the important subject of consideration, and anything which directly obstructs, and thus regulates, that commerce which is carried on among the states, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce." These utterances of the Supreme Court are certainly broad enough to cover the power of Congress to prevent unreasonable regulations of interstate commerce by carriers, whether attempted by unreasonableness of rates, or by unfair discrimination between persons or localities. The decision in that case upheld the power of Congress to prohibit private contracts, whether between carriers or others, so far as their effect was to raise the prices of goods, which were the subject of interstate commerce. If Congress can thus regulate contracts between private persons engaged in interstate trade, the power to regulate contracts for interstate transportation must also belong to Congress. The regulation of the cost of interstate transportation is certainly not less a part of the regulation of interstate commerce than is a regulation of the prices charged on the sales of goods in interstate trade. The creation of the Interstate Commerce Commission, with the power to pass upon the reasonableness or injustice of the rates of interstate carriers, is an exercise of the power of Congress to deal with and supervise the matter of rates of interstate transportation. The courts have held that this act did not confer on the Commission the power to declare, in advance, what rates are, or are not, reasonable and just. But

this question has been discussed, when it arose, solely as one of the intent of Congress. That Congress could confer such power if it deemed best, has been taken for granted. In the words of Mr. Justice Brewer, speaking for the court in Interstate Commerce Commission *v.* Cincinnati, N. O. & T. P. R. Co. 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, in reference to the possible remedies for the abuses at which the act to regulate commerce was aimed: "There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates; or it might commit to some subordinate tribunal this duty; or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as to that rule which is as old as the existence of common carriers, to wit, that rates must be reasonable." But the conclusion of the court in that case, and in every other case in which the question has been considered, is that the provisions of the act did not show any purpose to confer on the commission the power to fix rates in advance. In view, therefore, of what Congress has actually done to control interstate commerce in the anti-trust law and the act to regulate commerce, and of the enforcement of those laws by the Supreme Court of the United States, it seems quite hopeless to contend now that Congress has not power to provide for fixing the rates of interstate carriers.

Regulation of Rates as Preference of Ports.

Since the above article was in type, a pamphlet signed by Daniel Davenport, entitled "The Bearing of the Constitutional Prohibition against Port Preferences on Congressional Railroad-Rate Fixing," has been received. This is a strongly stated argument to prove that any of the proposed bills for congressional regulation of interstate railway rates is in violation of article 1, § 9, of the Constitution, declaring that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." This proceeds on the contentions that the various points of shipment in the different states are "ports" within the meaning of this provision, and that any congressional regulation by prescribing interstate railway rates must give a preference as between the "ports" in the various states, unless the rates are fixed entirely on the mileage basis. Reference is made to an argument by the Attorney General before the Senate Committee on Interstate Commerce, to the effect that these contentions are equally effective to invalidate the act of 1887; and the writer says the distinction is clear between that act, which required the carriers to make their rates reasonable, impartial, and just, and a statute which, either directly or through the action of the Commission, would itself fix the rates for the carriers. He adds: "The carriers in carrying on commerce between the states are not prohibited by the Constitution from preferring the ports of one state over those of another. . . . For Congress to say to the carriers, 'You shall not, in the conduct of your business, prefer unduly one port over another,' is a very different proposition from saying 'We, in the exercise of the governmental power to fix rates, shall prefer the ports of one state over those of another.'" The writer's conclusion is that "it seems too plain to admit of discussion, that the only system Congress could adopt, if it maintained even a semblance of conformity to the nonpreference clause, would be to establish all rates on a strictly mileage basis, and this would be so disastrous to the country that it is not to be thought of for a moment."

The above argument on this subject is presented here because it touches a phase of the subject not considered in the general discussion of the subject in the article preceding this, and not because of any intent to deal with it at length at this time. It may be suggested, however, that, even if stations on an interstate railroad are "ports" within the constitutional meaning, the framers of the Constitution in adopting this provision could hardly have intended it as a shield or immunity for great railroad corporations in charging unjust and unfair rates. In prohibiting a "preference" of the ports of one state over those of another, the purpose of the Constitution was to protect each state against unfair discrimination, and not to preclude a regulation of commerce that was reasonable, just, and fair. Is not the question of the "preference" by the regulation of commerce to be determined by its spirit and general effect? Would the establish-

ment of one rate between Philadelphia and New York, and a different mileage rate between San Antonio and Los Angeles, be an unconstitutional preference of the ports of one state over those of another, if the rates fixed were in fact just, fair, and reasonable in each instance? To hold this would seem to pervert the constitutional prohibition to an effect quite foreign to its intention.

The fight against the proposed law is not being made in the interest of any state or the ports of any state, but in the interest of the railroads. This is not conclusive, but it is suggestive. If the railroads can get under cover of this constitutional provision, it is not because it was intended for their benefit. The decisons of the United States Supreme Court upholding state laws which indirectly, remotely, or incidentally interfere with interstate commerce, may be pertinent in determining whether slight and incidental preferences which indirectly result from the establishment of reasonable and just rates for interstate carriage constitute a prohibited preference between "ports" of different states.

Excluding State Corporations from Interstate Commerce.

The power of Congress to deny to corporations the privilege of engaging in interstate commerce, except under such regulations as Congress may prescribe, is vigorously denied in an article in the "Harvard Law Review" for January by E. Parmalee Prentice. This writer contends that the right to engage in interstate commerce is a part of that inalienable liberty, the protection of which is one of the chief purposes for which government is instituted, and that the commerce clause of the Constitution was not intended to give Congress the power to tax or prohibit commerce among the states, but only to free such commerce from state discrimination. Also, that the constitutional guaranty that no person shall be deprived of life, liberty, or property without due process of law gives state corporations the power to engage in interstate commerce, because the liberty guaranteed by the Constitution includes the liberty to engage in trade, and that "the protection of the 5th and 14th Amendments belongs to all persons, and cannot be disregarded in respect to those artificial entities called corporations, any more than in respect to the individuals who compose them."

The contention that Congress cannot tax or prohibit commerce among the states, if admitted, does not dispose of the question of the power of Congress to regulate the corporations that may wish to engage in it. A congressional enactment requiring all corporations wishing to engage in interstate commerce to take a Federal charter, or to comply with prescribed conditions of Federal law and regulation, in order to exercise that privilege, may have its aim and purpose, not to restrict commerce, but to regulate it so as to prevent abuses. Though such regulation would necessarily involve something of restriction, a statute with such aim and purpose would be clearly enough an exercise of the power of regulation. The chief part of the argument of Mr. Prentice, however, is on the point that a corporation is a person, entitled to the liberty guaranteed by the 5th and 14th Amendments. This point is explicitly touched upon in Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211, 44 L. ed. 136, 20 Sup. Ct. Rep. 96, where the court said: "We think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution." It seems to be a good stretch of imagination to suppose that the framers of the Constitution intended, by the guaranty of liberty, to give corporations of one state the right to do business in another. Certainly the courts have long ago settled any query of that sort to the contrary. The right of one state to exclude from business therein the corporations of another state has been so long and so completely established by the decisions of the courts, that any contention now, to the contrary, is vain. A long line of decisions, marshaled in a note in 24 L. R. A., page 289, shows that the authority to this effect is overwhelming. Mr. Prentice couples the 5th and 14th Amendments together in his contention as to the rights of corporations to the guaranties of liberty, and obviously there is no distinction between them. Therefore, the decisions which so overwhelmingly settle his contention against him, so far as the 14th Amendment is concerned, leave little chance to maintain his contention with respect to the 5th Amendment. That is to say, the right of a cor-

poration to the "liberty" guaranteed to every "person" by the 5th Amendment is the same, and no greater, than that which is guaranteed by the same words in the 14th Amendment. To hold, therefore, that it gives state corporations the right to engage in interstate commerce logically requires the overruling of a long line of decisions which have established the right of one state to exclude corporations of other states.

The power of Congress to restrict the business of state corporations has been exercised, and this power sustained, by the Supreme Court in the case of state banks. The decision in Veazie Bank *v.* Fenno, 8 Wall. 533, 19 L. ed. 482, sustained an act of Congress imposing a tax, which was really a prohibitive tax, on the circulation as money of the notes of state banks. The power "to coin money, regulate the value thereof," etc., was the constitutional basis of this power. To drive the notes of state banks out of circulation, and, in effect, to exclude from the currency of the country all paper money except that issued by the Federal government, was less obviously and less directly conferred by this constitutional provision than is the power to exclude state corporations from interstate commerce by the express constitutional grant of power "to regulate commerce . . . among the several states."

Viewing the question under the analogy of this decision as to state banks, and under the express decisions on the question of the rights of state corporations in other jurisdictions, it would seem to be a hopeless task to undertake to establish that there is a constitutional right of state corporations to engage in interstate commerce as a part of the "liberty" guaranteed to persons by the Constitution.

State Jurisdiction over Foreign Ship.

A somewhat elaborate editorial in a prominent newspaper recently discussed the report of a prospective prize fight between a sailor of the United States Navy and a champion welter weight of the English Navy, which international controversy was expected to be settled on board a visiting British ship. The editor, in the interest of good morals, expressed disapproval of this mode of celebrating our international amity, and all good citizens will be in accord with him thus far. But, waxing enthusiastic in his purpose to prevent such an exhibition, he called upon "the authorities of the states of New York, and New Jersey, backed by the best sentiment of their people," to intervene. The authorities of these states, however, are presumably better informed than the learned editor with respect to the question of the jurisdiction of one of the states of the Union over a naval ship of a foreign power lying in harbor within the boundaries of the state. That a naval vessel of a foreign sovereign is, in such circumstances, still a part of the territory of that sovereign, and that deeds done on board such ship, though they may be offenses against the law of the sovereign to which the vessel belongs, are outside the jurisdiction of the state within which the vessel lies, should be known to a journalist who assumes to write on the subject.

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Book 69, Parts 5 and 6.

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Among the New Decisions.

Accord and Satisfaction.

The payment of less than is due is held, in Dreyfus *v.* Roberts (Ark.) 69 L. R. A. 823, to discharge the debt when an agreement to that effect is fully executed, and the discharge is evidenced by a written receipt for the lesser sum in full satisfaction of the greater one.

Benevolent Societies.

An election to treat the original contract as still in force, upon notification of reduction in the amounts of certificates in a mutual benefit society, adhered to for two years and five months, is held, in Supreme Council A. L. of H. v. Lippincott (C. C. App. 3d C.) 69 L. R. A. 803, not to be subject to change, so as to permit a certificate holder to treat the contract as rescinded, and sue for assessments paid.

Carriers.

A railroad company which expressly or by implication invites its passengers to use a stile over a wire fence in leaving its grounds is held, in Cotant v. Boone Suburban R. Co. (Iowa) 69 L. R. A. 982, to be bound to use at least ordinary care in seeing that it is fit for the purpose intended, although the stile was not erected by it, and the defective part is not on its property, but on property where it has no right to go to make inspection or repairs.

Conflict of Laws.

That a note for the payment of which a married woman becomes surety is made payable in a state where such contract is invalid, is held, in Garrigue v. Keller (Ind.) 69 L. R. A. 870, not to defeat her liability, although the suit is brought in that state, if the contract was valid at her domicil, where it was executed.

Contracts.

A covenant by a purchaser of the business and effects of a corporation, the sale of which is intended to terminate its existence, to indemnify it from and against the contracts and engagements to which the vendor appears to be now liable, and also all claims and demands on account of the same contracts and engagements, is held, in Busell Trimmer Co. v. Coburn (Mass.) 69 L. R. A. 821, not to cover a claim by the president-manager of the corporation to salary for the time subsequently accruing, where it was founded merely on the fact that he had been elected president, and there was no contract that the services and salary should continue for any specified time.

Corporations.

The power of a corporation to make valid contracts for the repurchase of its own stock in the absence of charter restrictions is sustained in Wisconsin Lumber Co. v. Greene & W. Teleph. Co. (Iowa) 69 L. R. A. 968.

Drains and Sewers.

A statute providing for the cleaning of drainage ditches, and the assessment of the costs thereof according to benefits, upon the parties along its line who were assessed for the cost of its original construction, is held, in Taylor v. Crawford (Ohio) 69 L. R. A. 805, not to take private property for public use without compensation.

Equity.

That equity will not prevent a forfeiture of an estate for breach of a condition subsequent is held in Maginnis v. Knickerbocker Ice Co. (Wis.) 69 L. R. A. 833, where the performance of the condition was made of the very essence of the contract, and the damages for the breach cannot be measured in money, while the failure to perform was not caused by mistake, nor the result of mere negligence.

Fixtures.

The mere finishing material, such as doors, mantels, casings, etc., which have been purchased for an unfinished building and placed therein, but not affixed thereto, is held, in Blue v. Gunn (Tenn.) 69 L. R. A. 892, not to pass by a sale of the real property under a mortgage foreclosure, where it is not mentioned or deemed a part of the sale.

A mortgage of a lot on which stands a partially completed building is held, in

Byrne v. Werner (Mich.) 69 L. R. A. 900, to pass cut stone and structural iron prepared for the building, and located on the lot mortgaged and that adjoining, if the intention of the parties is that the building shall be speedily completed with the material at hand.

Husband and Wife.

See also CONFLICT OF LAWS; LIFE TENANTS; SALE.

The liability of a husband for the support of his wife at an asylum for the insane, to which she has been removed by due process of law, is denied in Richardson v. Stuesser (Wis.) 69 L. R. A. 829, in the absence of a statute expressly imposing such liability.

Injunction.

See WATERS.

Insurance.

An open mortgage clause attached to a policy of fire insurance, which merely provides that loss, if any, shall be paid to the mortgagee as his interest may appear, is held, in Collinsville Sav. Soc. v. Boston Ins. Co. (Conn.) 69 L. R. A. 924, not to create any contract relations between the mortgagee and insurer, or to give the mortgagee a right to participate in arbitration proceedings to fix the amount of loss and that, therefore, he will be bound by the award, although he was given no opportunity to be heard.

Internal Improvement.

Appropriations to aid counties in the construction of public roads are held, in Bonsal v. Yellott (Md.) 69 L. R. A. 914, not to be forbidden by a constitutional provision that the general assembly shall not have power to involve the state in the construction of works of internal improvement, nor to grant any aid thereto which shall involve the faith or credit of the state, nor make any appropriation therefor.

Judgment.

A decree of a probate court having jurisdiction, assigning the residue of the estate of a deceased person, is held, in Ladd v. Weiskopf (Minn.) 69 L. R. A. 785, to be conclusive upon all persons interested in the estate, whether then in being or not.

Landlord and Tenant.

That a tenant cannot be relieved from forfeiture of his term because of breach of his covenant to pay taxes after the premises have been sold because of his default, is held, in Gordon v. Richardson (Mass.) 69 L. R. A. 867, since he can no longer perform his covenant, or make compensation for the breach, so as to entitle him to equitable relief.

Life Tenants.

One entitled to an undivided life estate under a statute giving a surviving husband or wife a one-third interest in real estate of the other, is held, in Swayne v. Lone Acre Oil Co. (Tex.) 69 L. R. A. 986, to have no right to demand absolutely any part of the production of oil wells subsequently opened upon the property by the remaindermen, but to be entitled only to the income upon one third of the oil produced.

Master and Servant.

See also PROXIMATE CAUSE.

The employers' liability act changing the law as to the defense in case of negligence of fellow servants of corporations is held, in Pittsburgh, C. C. & St. L. R. Co. v. Montgomery (Ind.) 69 L. R. A. 875, to be constitutional.

The liability of an employer to an employee for injuries caused by negligence in the handling of a boiler upon the premises, by a co-employee, an engineer who is conceded to have been competent, is denied in Service v. Shoneman (Pa.) 69 L. R. A. 792.

A corporation operating a "logging railroad," not as a common carrier, but exclusively for its own private business, is held, in Schus v. Powers-Simpson Co. (Minn.)

69 L. R. A. 887, to be subject to the provisions of a statute making railroad corporations liable for injuries to servants caused by the negligence of fellow servants.

The failure to box, or otherwise protect, a rapidly revolving upright shaft coming up through the floor in an alley or passageway where an inexperienced girl is required to sweep, who is not warned of the danger, is held, in American Tobacco Co. *v.* Strickling (Md.) 69 L. R. A. 909, to be properly found by the jury to constitute negligence which will render the employer liable for injuries to her when her clothing is caught and wound upon the shaft.

Mills.

See WATERS.

Mortgage.

See INSURANCE.

Negligence.

The occupant of the lower floors of a building, who blocks the stairway leading from the upper floor to the ground, so that a tenant of such floor, in seeking to escape a fire, is compelled to drop a considerable distance to reach the ground, is held, in Cohn *v.* May (Pa.) 69 L. R. A. 800, to be liable for the injury resulting to him therefrom.

Nuisance.

The characteristic noises and odors issuing from a chicken house and yard, which are maintained in a cleanly manner and cared for so as not injuriously to affect the health of any normal person in the neighborhood, are held, in Wade *v.* Miller (Mass.) 69 L. R. A. 820, not to be a nuisance, although they may make neighboring property uncomfortable as a residence for invalids.

Oil.

See LIFE TENANTS.

Parks.

Forbidding the use of land near a park or park way for advertising purposes is held, in Com. *v.* Boston Advertising Co. (Mass.) 69 L. R. A. 817, to amount to a taking of it for public use, for which compensation must be made.

Proximate Cause.

The proximate cause of the injury of a servant by the fall of a derrick because of the breaking of a spliced rope is held, in Rincicotti *v.* John J. O'Brien Contracting Co. (Conn.) 69 L. R. A. 936, not to be the failure to insert thimbles into the loops of the splice, but the failure to inspect the rope for the purpose of determining its condition, and to repair it after it has become chafed and worn by use, where there is nothing to show that the splice is not sufficiently strong, without the thimbles, to do the work required of it, and it fails because of the wear due to continued use.

Real Property.

That a fee simple is vested in the first taker under the rule in Shelley's Case by a conveyance to one "during his natural life, and then to his heirs," is decided in Doyle *v.* Andis (Iowa) 69 L. R. A. 953.

Replevin.

That replevin lies for growing strawberry plants, although they are attached to the soil, is declared in Cannon *v.* Mathews (Ark.) 69 L. R. A. 827, since they are fruits of industry, and must be treated as chattels.

Sale.

That no implied warranty of fitness of an article for a particular purpose arises out of a contract to make or supply a described and definite article, is declared in Davis

Calyx Drill Co. *v.* Mallory (C. C. App. 8th C.) 69 L. R. A. 973, although the vendor knows that the vendee is purchasing it to accomplish a specific purpose, because the essence of this contract is the delivery of the specific article, and not the accomplishment of the purpose.

Trusts.

The removal of the widow as trustee of a fund provided for the benefit of testator's daughter is held, in Polk *v.* Linthicum (Md.) 69 L. R. A. 920, to be required, where she elected to take her dower rights in opposition to the will, thereby depleting the trust estate, and destroying a very important part of the scheme of the testator, remarried within a short time, became estranged from the *cestui que trust* and her cotrustees, so that no intercourse could subsist between them, and kept the estate in needless litigation.

Vendor and Purchaser.

The right to enforce payment of the money under a contract to purchase real estate which stipulates that the property shall be clear of all encumbrances is denied in Taylor *v.* Evans (Pa.) 69 L. R. A. 790, where the title has not been accepted, and there is an existing right on the part of the municipality to open a platted street over the property, which will destroy the buildings without making compensation for them.

Waters.

The wharfage and reclamation rights of the owner of land on a cove leading off from a river are held, in Richards *v.* New York, N. H. & H. R. Co. (Conn.) 69 L. R. A. 929, not to be destroyed or impaired by the construction of an embankment across the mouth of the cove.

The owner of property bordering on a mill pond is held, in De Witt *v.* Bissell (Conn.) 69 L. R. A. 933, to have no right to enjoin the owner of the dam and water privilege from drawing the water down to its natural level when it becomes necessary for the utilization of the power, although a portion of the bottom of the pond is thereby uncovered and exposed to the sun, rendering it unhealthful and injurious to the abutting owner.

Wills.

The granting of an absolute divorce is held, in *Re* Jones (Pa.) 69 L. R. A. 940, not to revoke, by implication, a legacy in the will of the husband in favor of the wife.

Recent Articles in Law Journals and Reviews.

"Railroad Rate Regulation."—18 Green Bag, 9.

"The Spirit of the Common Law."—18 Green Bag, 17.

"Federal Regulation of Quarantine."—4 Michigan Law Review, 189.

"Liability for the Unauthorized Torts of Agents."—4 Michigan Law Review, 199.

"The Effect of Abandonment on the Contract of Affreighment; *The Eliza Lines* in the Supreme Court."—4 Michigan Law Review, 215.

"Constitutionality of State Laws as to Service of Process on Foreign Corporations."—4 Michigan Law Review, 218.

"Creditors' Right to Hold Shareholders Liable on Corporate Stock Issued for Property Valued on the Basis of Prospective Profits."—4 Michigan Law Review, 220.

"Enlargement of a Life Estate by an Accompanying Power of Disposition."—62 Central Law Journal, 25.

"Can Congress Regulate the Business of Insurance?" 62 Central Law Journal, 28.

"Exit of the Doctrine of Situs."—31 National Corporation Reporter, 768.

"The Issue of Corporate Stock for Property Purchased—A New Phrase." 15 Yale Law Journal, 111.

"Constitutional Provisions against Forcing Self-Incrimination."—15 Yale Law Journal, 127.

"The System of Probate Courts in Connecticut with Some Suggestions for Its Improvement."—15 Yale Law Journal, 131.

"Perforated Music Rolls not Sheet Music

within Meaning of Copyright Law."—15 Yale Law Journal, 141.

"Is International Law a Part of the Law of England?"—22 Law Quarterly Review, 14.

"Changes in the Law of Husband and Wife."—22 Law Quarterly Review, 64.

"Municipal Ordinances and Contracts for the Removal and Disposition of Garbage, etc., Involving Their Reasonableness, Restraint of Trade and Monopoly, and Interference with Property and Personal Rights."—62 Central Law Journal, 64.

"Origin of English Land Tenures."—40 American Law Review, 9.

"Injunctions against Strikes."—40 American Law Review, 42.

"Of the Nature of Rights; and of the Principles of Right or Jurisprudence."—40 American Law Review, 58.

"The Torrens System."—11 Virginia Law Register, 707, 717, 735.

"Liability of a Landlord for Injuries to a Tenant, Caused by Defects in the Leased Premises."—62 Central Law Journal, 43.

"Congress, and the Regulation of Corporations."—19 Harvard Law Review, 168.

"Rights of the Parties to a Contract of Affreightment after the Vessel has been Justifiably Abandoned."—19 Harvard Law Review, 200.

"Liability of Foreign Real Estate to Collateral Inheritance Tax."—19 Harvard Law Review, 201.

"Charitable Bequests to Unincorporated Societies."—19 Harvard Law Review, 202.

"Rights of a Life Tenant in a Private Cemetery."—19 Harvard Law Review, 205.

"Constitutionality of a State Tax on Movables Situated outside the State."—19 Harvard Law Review, 206.

"'Tentative' Trusts in Savings Bank Deposits."—19 Harvard Law Review, 207.

"Effect of Acceptance on Right to Sue for Defective Performance."—19 Harvard Law Review, 208.

"Are Defectively Incorporated Associations Partnerships?"—6 Columbia Law Review, 1.

"The Relation to Each Other of Different Administrators of the Same Deceased."—6 Columbia Law Review, 15.

"'Agency by Estoppel': A Reply."—6 Columbia Law Review, 34.

"Public Use in Eminent Domain."—6 Columbia Law Review, 46.

"Admissibility of Deceased Accountant's Abstract of Lost Account Books."—6 Columbia Law Review, 47.

"International Law as Part of the Law of the Land."—6 Columbia Law Review, 49.

"The Status of American Seamen Shipping in a Foreign Merchant Marine."—6 Columbia Law Review, 51.

New Books.

"Encyclopædia of Evidence." Edited by Edgar W. Camp and John F. Crowe. Los Angeles, Cal. J. D. Powell Co. 1905. Vols. 6 and 7. Price $6 per vol.

These volumes continue the subjects from "Fraud" to "Judicial Notice," including numerous important titles, the largest of which is "Impeachment of Witnesses," while that of "Homicide" is nearly as large.

"Virginia State Bar, Questions and Answers." By D. W. Taylor. Paper, $2.

Sharp & Alleman Co's "Lawyers' and Bankers' Directory for 1906." Sheep, $5.

"New Jersey Lawyers' Diary and Bar Directory, 1906." By C. W. Parker. Cloth, $1.50.

"The Village Manual for the State." (Minnesota) By Walter S. Booth. Paper, $1.

"The Township Manual of the State." (Minnesota) By Walter S. Booth. 18th ed. Paper, $1.

"Supplement to Sayles's Civil Statutes." 1904–1906. $4.

"Leading Cases in the Bible." By David W. Amram. $1.50.

"American Citizenship." By John S. Wise. The first of a series of Studies in Constitutional Law. $3.

Overland's "Classified Corporation Laws of All the States." Buckram, $3. Sheep, $3.50.

"Partnership Relations." By Thomas Conyngton. Buckram, $2. Sheep, $2.50.

"A Treatise on the Insurance Law of Illinois." By Walter E. McCornack. 1 Vol. $6.

"Instructions to Juries in Civil Cases." (Missouri) By Eugene McQuillin. $7.50.

"Wald's Pollock on Contracts." By Samuel Williston. Third American, from the Seventh English, Edition. 1 Vol. $6.40 delivered.

"Mechanics' Lien Laws in Canada." By W. B. Wallace. $5.

"Corporation Laws of West Virginia." Buckram, $2.

"Water Rights in the Western States." By Samuel C. Wiel. $5.

"Rate Regulation of Gas and Electric Lighting." By Van Sinderen Lindsley. Cloth, $1.50.

"The Home Library of Law." By Albert S. Bolles. 6 Vols. $9 net.

Burns's "Supplement to Indiana Statutes." 1905. $6.

Dewey on "Legislation against Speculation and Gambling." $1.50.

Fairlie on "The National Administration of the United States." $2.50.

Hopkins on "Personal Injuries." $5.50.

Marshall's "Kansas Trial Brief." $7.50.

"Street Railway Reports." Vol. 3. $5.

Tiffany's "Michigan Justice Guide." 10th ed. $6.50.

Abbott's "New York Cyclopædic Digest Supplement." 1900–1905. 2 Vols. $15.

"Rules of Practice in New York Courts of Record." $1.50.

Finegan's "New York School Law." $1.

Keezer's "Law of Marriage and Divorce." $4 net.

Beale's "Law of Hotels, Innkeepers, Theaters, and Sleeping Car Companies." $6 net.

"A Treatise on the Law of Instruction to Juries in Civil Cases." With Forms. By Eugene McQuillin. $7.50.

"Abbreviations Used in Book Catalogues." By Mary Medlicott. Paper, 15 cts.

"Greater New York and State Lawyers' Diary for 1906." By W. Reid Gould. $1.

"Laws of the Commonwealth of Massachusetts Relating to Political Committees, Caucuses, Conventions, and the Nomination of Candidates." By R. Lewis Gay. 75 Cts.

"How to Run a Corporation." By A. J. Daggs. Buckram, $5. Sheep, $6.

"Corporation Accounting and Corporation Law." (Cal.) By J. J. Rahill. 19th ed. $3.

"Code of Laws for the District of Columbia." Recompiled by D. E. Garges. $3.

Pattison's "Missouri Digest." Vol. 7. $7.50.

"Conveyancing." (Canadian) By A. H. O'Brien. $8.50.

"Crimes by National Bank Officers and Agents." By Henry Terrell. Cloth, $2.50. Sheep, $3.

Jones on "Landlord and Tenant." $6.

The Humorous Side.

IDEM SONANS IN A HOG TRADE.—An Arkansas negro who brought a dressed hog to town for sale, and tried to sell it to a lawyer on the street, was somewhat puzzled when the man of the law, wishing to find out if the hog was free from chattel mortgages and the like, asked him if there was "any lien on the hog." Perplexed, but wishing to please, and thinking the hog might be wanted for sausage, or something of the kind, instead of lard, he replied: "Yes, suh, there's a right smart of lean on it." And this he proceeded to demonstrate. This recalls the ancient story of the boy who was trying to sell a dog, and, on being asked if the dog was fat, supposing a fat dog was desired, said: "Oh, yes, he is the fattest dog you ever saw," whereupon the prospective buyer said: "Well, I didn't want a fat dog," and the agile youth replied, somewhat hesitatingly: "Well, he isn't so tarnal fat after all."

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